

REMARKS / ARGUMENTS

Applicant notes that the Examiner crossed out WO 98/35958 and WO 00/59509 from the PTO-1449 form attached to the Office action. However, both of these documents were cited in the International Search Report and should have been transmitted by the International Bureau. Therefore, Applicant believes that it was not appropriate for the Examiner to strike these publications from the PTO-1449 form based on Applicant's failure to provide a copy. However, Applicant now submits a copy of each publication in order to ensure that these publications are properly considered. Applicant requests the Examiner to consider the publications and acknowledge it in the next communication.

Claims 1-5 were rejected under 35 USC 112, first paragraph. Applicant requests reconsideration and withdrawal of this rejection for the reasons that follow.

The present claims cover a method of treating agnogenic myeloid metaplasia (AMM) while the specific examples demonstrate effectiveness against conditions that can be related to AMM.

The Examiner contends that the present claims are not enabled because the examples do not specify that AMM was the cause of the splenomegaly and protuberant spleen treated in them. According to the Examiner, the specific examples do not imbue the skilled artisan with a reasonable expectation that PTK787 would be effective for treating AMM. However, Applicants assert that this is not the proper standard for determining whether the disclosure enables one of skill in the art to practice the claimed invention.

The specification clearly discloses that AMM can be treated with the disclosed compounds and teaches how to do so. The scope of the teaching presented in the specific examples does not provide an objective basis to doubt the truth of the statements made in the specification which support the present claims. However, such an objective basis is required to support a rejection for lack of enablement. See MPEP 2107.02. Therefore, the present rejection is improper and should be withdrawn. Accordingly, Applicant requests withdrawal of the rejection under 35 USC 112, first paragraph.

Claims 1-5 were rejected under 35 USC 103(a) over Tille et al in view of Barosi. Applicants request reconsideration and withdrawal of this rejection for the reasons that follow.

Tille et al is relied upon as teaching that PTK787 inhibits b-FGF. Barosi is relied upon as disclosing that deregulation of the b-FGF pathway is involved in AMM. Applicant disputes that the references make the teachings attributed to them and asserts that, even if they did, the present claims would be patentable over their combined disclosure.

Tille et al discloses PTK787 inhibits b-FGF induced angiogenesis, but apparently through interaction with VEGFRs. The reference also discloses that all compounds tested are inactive against bFGF-induced proliferation at the concentration range required for VEGFR inhibition. See page 1076, second column, second paragraph. Thus, it is not clear to Applicant that Tille et al makes the teaching attributed to it by the Examiner. Applicant requests the Examiner to identify the sections of the reference which are relied upon for the teaching attributed to it. However, Applicants also assert that the disclosure cited above teaches away from using the compounds to treat a condition caused deregulation of the b-FGF pathway.

Barosi clearly indicates that the connection between AMM and deregulation of the b-FGF pathway is a hypothesis based on increased expression of b-FGF in CD34+ cells of AMM patients. See, page 2955, second column, first full paragraph. Applicant asserts that such disclosure does not provide a basis for the skilled artisan to have a reasonable expectation that an inhibitor of b-FGF would be useful to treat AMM.

Furthermore, even if both references made the teachings attributed to them by the Examiner, the combined disclosure of the references would not provide a reasonable expectation that AMM would be treatable with an inhibitor of b-FGF. At best, the skilled artisan would consider such disclosures a theoretical basis to experiment with b-FGF inhibitors for the treatment of AMM. However, until the experiments were successfully completed, such disclosures would not provide any basis for the skilled artisan to have reasonable expectation of success. Therefore, the claimed invention would be patentable over the combined disclosure of the references even if they made the teachings attributed to them by the Examiner.

For the reasons discussed above, Applicant requests reconsideration and withdrawal of the rejection of claims 1-5 under 35 USC 103(a).

Entry of this amendment and reconsideration and allowance of the claims are respectfully requested.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "George R. Dohmann", written over a horizontal line.

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